

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DAVID LEE SIMMONS,

Plaintiff,

v.

PETER DEUEL et al.,

Defendants.

No. CV 08-343-PK

OPINION AND ORDER

MOSMAN, J.,

On September 24, 2008, Magistrate Judge Papak issued Findings and Recommendation ("F&R") (#86) in the above-captioned case recommending that I GRANT IN PART and DENY IN PART the following motions: State Defendants' Rule 12 Motion to Dismiss (#23); Jones and Jefferson County's Rule 12 Motion to Dismiss (#27); Kimble's Rule 12 Motion to Dismiss (#30); and Alexander's Rule 12 Motion to Dismiss (#32). Plaintiff (#92) and defendants Kimble (#90) and Alexander (#91) filed objections.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to

review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Papak's recommendation, and I ADOPT the F&R (#86) as my own opinion.

IT IS SO ORDERED.

DATED this 18th day of December, 2008.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court